



U.S. Department  
of Transportation

Federal Motor Carrier  
Safety Administration

400 - Seventh St., SW  
Washington, DC 20590

August 19, 2003

Refer to: MC-MBM  
FOIA 2003-0673

**FMCSA-1997-2277-55**

Mr. Neill L. Thomas  
Director, Safety and Operations  
American Trucking Associations  
2200 Mill Road  
Alexandria, Virginia 22314-4677

Dear Mr. Thomas:

This responds to your Freedom of Information Act (FOIA) request dated August 6, 2003. You requested a copy of an August 19, 2002 policy memorandum signed by Julie Cirillo, subject: Payment for Employer Inquiries. You also requested copies of any other FMCSA policy on the subject.

In accordance with the FOIA, 5 U.S.C. § 552, we are enclosing a copy of the requested memorandum, in its entirety. This is the only document that falls within the scope of your request.

The person responsible for this decision is the undersigned. Pursuant to the regulations of the Department of Transportation, 49 CFR 7.21, you have the right to appeal this decision to Dr. Allan Fisher, Associate Administrator for Administration, Federal Motor Carrier Safety Administration, 400 Seventh Street, SW., Washington, D.C. 20590. Should you wish to appeal, his decision will be administratively final. Your appeal should be made in writing within 30 days after receipt of this letter and must include all information and arguments relied upon in making the appeal.

For your information, we are also placing a copy of this memorandum into docket number FMCSA-1997-2277.

Sincerely yours,

Kathy Ray  
FOIA Officer

Enclosure



U.S. Department  
Of Transportation  
Federal Motor Carrier  
Safety Administration

# Memorandum

AUG 19 2002

Subject: **ACTION:** Payment for Employer Inquiries

Date: ~~July 22, 2002~~

From: Julie Anna Cirillo  
Assistant Administrator and Chief Safety Officer

In Reply Refer To: MC-ECE

To: Division Administrators/State Directors  
Field Administrators  
National Enforcement Team

This memo establishes policy procedures regarding employer inquiries about a driver's drug and alcohol testing history. In 49 CFR Part 40, "Procedures for Transportation Workplace Drug and Alcohol Testing Programs," the regulations require employers to conduct a background check on employees prior to placing them in safety-sensitive positions. Employers must request drug and alcohol testing information relative to the employee's positive testing history for the previous 2 years of employment. The purpose of this memo is to address whether previous employers and their agents can charge a fee for releasing this information.

When employers conduct background checks on new employees, they must obtain written consent from the employee and submit a request for information to all previous employers within the preceding 2 years. Upon receipt of the inquiry, previous employers are required to report positive drug testing history to the inquiring employer. As background information, alternative methods for servicing requests for previous employer information are being used, such as third party administrators (service agents). In some cases, these third party administrators are charging a nominal fee to inquiring employers and the inquiring employers are paying the fee to receive the requested information. However, in other cases, inquiring employers are refusing to pay the fee and are not receiving the requested information.

The regulations do not address the issue of recouping costs in order to comply with this requirement. However, § 40.25(h) clearly directs the previous employer from whom information is requested, after review of the written employee's consent, to immediately release the information to the employer making the inquiry.

Therefore, the following courses of action have been established to address future handling of this issue:

When it comes to the attention of the division office that a previous employer or its service agent is withholding drug and alcohol testing information pending payment, the division office should document the information reported. This includes obtaining documentation from the complainant to support the allegations. Subsequently, the documentation will be forwarded to David Geasland, Safety Investigator, for the New Mexico division office. The data will be maintained and logged for further action. If the documentation provided is substantial, two alternatives are available:

Alternative A: Upon sufficient documentation, David Geasland will forward the documentation to the appropriate division office. The division office will place the previous employer on its complaint register and conduct a streamlined compliance review addressing parts 40 and 382.

Alternative B: If the documentation includes a service agent that is not in compliance with the regulations, David Geasland will forward the documentation to the Federal Motor Carrier Safety Administration Service Center with jurisdiction over the geographic area where the violations exist. The service center will initiate a Notice of Corrective Action and submit it to the service agent. In accordance with 49 CFR 40.367(c), the Enforcement Program Manager is designated the initiating official for the purpose of issuing the Notice of Corrective Action. The service agent will be given 60 days to correct the deficiency; failure to correct the deficiency will be documented and forwarded to the Drug and Alcohol Program Manager, whereupon a Notice of Proposed Exclusion will be initiated against the service agent.

If you have any questions, please contact Kenneth Rodgers at (202) 366-4016.